

COURTREL WALKER)
)
 Plaintiff,)
)
 v.) No. 1:14CV131 SNLJ
)
 SHAWN OWENS, et al.,)
)
 Defendants.)

This matter is before the Court upon the motion of plaintiff Courtrel Walker (registration no.1234598), an inmate at Southeast Correctional Center (“SECC”), for leave to commence this action without payment of the required filing fee. For the reasons stated below, the Court finds that the plaintiff does not have sufficient funds to pay the entire filing fee and will assess an initial partial filing fee of \$1.00. *See* 28 U.S.C. § 1915(b)(1). Furthermore, after reviewing the complaint, the Court will partially dismiss the complaint and will order the Clerk to issue process or cause process to be issued on the non-frivolous portions of the complaint.

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these

monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. *Id.*

Plaintiff has been unable to attain a copy of his certified account statement from the prison. Accordingly, the Court will assess a nominal initial partial filing fee of \$1.00 at this time.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it “lacks an arguable basis in either law or fact.” *Neitzke v. Williams*, 490 U.S. 319, 328 (1989); *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. *Spencer v. Rhodes*, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), *aff’d* 826 F.2d 1059 (4th Cir. 1987). A complaint fails to state a claim if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

To determine whether an action fails to state a claim upon which relief can be granted, the Court must engage in a two-step inquiry. First, the Court must identify the allegations in the complaint that are not entitled to the assumption of truth. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950-51 (2009). These include “legal conclusions” and “[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements.” *Id.* at 1949. Second, the Court must determine whether the complaint states a plausible claim for relief. *Id.* at 1950-51. This is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 1950. The plaintiff is required to plead facts that show

more than the “mere possibility of misconduct.” *Id.* The Court must review the factual allegations in the complaint “to determine if they plausibly suggest an entitlement to relief.” *Id.* at 1951. When faced with alternative explanations for the alleged misconduct, the Court may exercise its judgment in determining whether plaintiff’s proffered conclusion is the most plausible or whether it is more likely that no misconduct occurred. *Id.* at 1950, 1951-52.

The Complaint

Plaintiff brings this action pursuant to 42 U.S.C. § 1983 alleging violations of his civil rights. Named as defendants are: Shawn Owens (Correctional Officer, ERDCC); Jeremiah Richardson (Correctional Officer, ERDCC); David Shipley (Correctional Officer, ERDCC); Terry Russell (Warden, ERDCC); and Joshua Green (Correctional Officer, ERDCC). Plaintiff has named defendants in both their individual and official capacities.

Plaintiff asserts that defendant Owens, defendant Richardson and defendant Shipley attacked him on October 25, 2012, while he was restrained in handcuffs and leg restraints. He claims defendants punched him in the face, knocked him on the floor, stomped his head on the ground and pushed his head into the steel bunk bed several times. Plaintiff claims he suffered several injuries as a result of the beating. He asserts his left eye was swollen shut, his jaw was knocked “out of place,” his tooth was knocked out, and he was knocked unconscious.

Plaintiff alleges that the Warden, Terry Russell, turned a “blind eye” to the beating that took place at Eastern, Reception and Diagnostic Reception Center (“ERDCC”).

Plaintiff has failed to make any allegations against defendant Joshua Green.

Discussion

Plaintiff’s allegations of excessive force against correctional officers Shawn Owens, Jeremiah Richardson and David Shipley, brought against these defendants in their individual capacities, state claims as alleged. As such, the Court will instruct the Clerk to issue process on

these defendants, in their individual capacities, pursuant to the waiver agreement that this Court maintains with the Missouri Attorney General's Office for Missouri of Department Corrections employees. Because plaintiff has not made any individual allegations against defendant Green, however, the Court will dismiss plaintiff's allegations against this defendant. *See, e.g., Madewell v. Roberts*, 909 F.2d 1203, 1208 (8th Cir. 1990) ("Liability under § 1983 requires a causal link to, and direct responsibility for, the alleged deprivation of rights.")

Similarly, plaintiff's allegations against defendant Russell will also be dismissed, as they sound merely in respondeat superior. *See also Martin v. Sargent*, 780 F.2d 1334, 1338 (8th Cir. 1985) (claim not cognizable under § 1983 where plaintiff fails to allege defendant was personally involved in or directly responsible for incidents that injured plaintiff); *Boyd v. Knox*, 47 F.3d 966, 968 (8th Cir. 1995) (respondeat superior theory inapplicable in § 1983 suits); *Keeper v. King*, 130 F.3d 1309, 1314 (8th Cir. 1997) (noting that general responsibility for supervising operations of prison is insufficient to establish personal involvement required to support liability under § 1983); *Woods v. Goord*, 1998 WL 740782, at *6 (S.D.N.Y. October 23, 1998) (receiving letters or complaints does not render prison officials personally liable under § 1983).

Last, the Court will dismiss plaintiff's claims against defendants, in their official capacities, as naming a government official in his official capacity is the equivalent of naming the government entity that employs the official, in this case the State of Missouri. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). "[N]either a State nor its officials acting in their official capacity are 'persons' under § 1983." *Id.* As a result, plaintiff's claims against the named defendants in their "official capacities" cannot be sustained.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$1.00 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that if plaintiff fails to pay the initial partial filing fee within thirty (30) days of the date of this Order, then this case will be dismissed without prejudice.

IT IS FURTHER ORDERED that the Clerk shall issue process or cause process to issue upon the complaint as to defendants Shawn Owens, Jeremiah Richardson and David Shipley, in their individual capacities. These defendants, who are MDOC employees at ERDCC, shall be served through the waiver agreement this Court maintains with the Missouri Attorney General’s Office.

IT IS FURTHER ORDERED that, pursuant to 42 U.S.C. § 1997e(g)(2), defendants Shawn Owens, Jeremiah Richardson and David Shipley shall reply to plaintiff’s claims within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint as to defendants Terry Russell or Joshua Green because, as to these defendants, the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

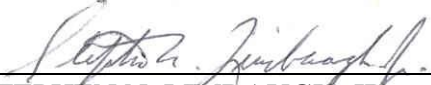
IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint against defendants in their official capacities because the claims against

defendants in their official capacities are subject to dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B).

IT IS FURTHER ORDERED that this case is assigned to Track 5B: Prisoner Standard.

An Order of Partial Dismissal will accompany this Memorandum and Order.

Dated this 8th day of January, 2015.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE